



राजपत्र, हिमाचल प्रदेश (असाधारण)

हिमाचल प्रदेश राज्यप्रशासन द्वारा प्रकाशित

शिमला, शनिवार, 16 मई, 1987/26 वंशाख, 1909

हिमाचल प्रदेश सरकार

HIMACHAL PRADESH VIDHAN SABHA SECRETARIAT

NOTIFICATION

Shimla-4, the 31st March, 1987

No. 1-13/87-VS.—In pursuance to rule 135 of the Rules of Procedure and Conduct of Business of the Himachal Pradesh Legislative Assembly, 1973, the Himachal Pradesh Co-operative Land Development Banks (Amendment) Bill, 1987 having been introduced on the

31st March, 1987 in the Himachal Pradesh Vidhan Sabha, is hereby published in the Gazette.

V. VERMA,
Secretary.

THE HIMACHAL PRADESH CO-OPERATIVE LAND DEVELOPMENT BANKS (AMENDMENT) BILL, 1987

(AS INTRODUCED IN THE LEGISLATIVE ASSEMBLY)

A

BILL

to amend the Himachal Pradesh Co-operative Land Development Banks Act, 1979 (Act No. 23 of 1979).

BE it enacted by the Legislative Assembly of Himachal Pradesh in the Thirty-eighth Year of the Republic of India as follows:—

1. (1) This Act may be called the Himachal Pradesh Co-operative Land Development Banks (Amendment) Act, 1987. Short title and commencement.

(2) It shall come into force on such date as the State Government may by notification in the Official Gazette appoint.

23 of 1979. 2. For the word "LAND" occurring in the long title of the Himachal Pradesh Co-operative Land Development Banks Act, 1979 (hereinafter called the principal Act), the words "AGRICULTURE AND RURAL" shall be substituted. Amendment of long title.

3. For the words "co-operative land development banks" occurring in the preamble to the principal Act, the words "co-operative agriculture and rural development banks" shall be substituted. Amendment of preamble.

4. For the word "Land" occurring in sub-section (1) of section 1 of the principal Act, the words "Agriculture and Rural" shall be substituted. Amendment of section 1.

5. In section 2 of the principal Act,— Amendment of section 2.

(i) after clause (a), the following clause (aa) shall be inserted, namely:—

"(aa) "Gehan" means a special charge on movable or immovable property, in favour of the Agriculture and Rural Development Bank or a Primary Agriculture and Rural Development Bank by a mere declaration in writing by the borrowers for securing the payment of money advanced, or to be advanced, by way of loan, which will have all the characteristics of a valid mortgage;"

(ii) in clause (c), for "Land Development Bank", the words "Agriculture and Rural Development Bank"; and for "Primary Land Development Bank", the words "Primary Agriculture and Rural Development Bank" shall be substituted;

(iii) in clause (d), for the words "Primary Land Development Bank", the words "Primary Agriculture and Rural Development Bank"; and for the words "Co-operative Land Development Bank", the

words "Co-operative Agriculture and Rural Development Bank" shall be substituted;

(iv) after clause (d), the following clause (dd) shall be inserted, namely:—

"(dd) "mortgage" means a security by way of mortgage for the payment of any definite and certain sum of money advanced or lent at the time, or previously due or owing, or forborne to be paid, being payable or for the repayment of money to be thereafter lent, advanced or paid, or which may become due upon on current account, together with any sum already advanced or due, or without, as the case may be, and includes any charge or lien on any property for securing money or money's worth;" and

(v) in clause (i) for the words "the Himachal Pradesh State Co-operative Land Development Bank Ltd.", the words "the Himachal Pradesh State Co-operative Agriculture and Rural Development Bank Ltd." shall be substituted.

Amendment
of sections
3, 4, 15, 16,
20, 34, 37,
43, 44, 46,
48, 51, 52,
53 and 54.

6. For the words "Land Development Bank" wherever these occur in sections 3, 4, 15, 16, 20, 34, 37, 43, 44, 48, 52, 53 and 54 of the principal Act, the words "Agriculture and Rural Development Bank"; and for the words "Primary Land Development Bank" wherever these occur in sections 4, 46, 51 and 52 of the principal Act, the words "Primary Agriculture and Rural Development Bank" shall be substituted.

Amendment
of section 6.

7. In section 6 of the principal Act, for the words "The mortgages" occurring in the beginning, the words "The Gehan created and mortgages executed"; and for the words "Primary Land Development Bank", the words "Primary Agriculture and Rural Development Bank" shall be substituted.

Amendment
of section 7.

8. In the heading and items (i) and (ii) of section 7 of the principal Act, for the word "mortgages", wherever it occurs, the words "Gehan, mortgages, hypothecations" shall be substituted.

Amendment
of section 9.

9. In section 9 of the principal Act,—

- (a) for the word "mortgages" occurring for the first time, the words "Gehan or mortgage or hypothecation held or mortgages, charges or hypothecation partly held and partly to be acquired"; for the word "mortgages" occurring for the second time, the words "Gehan or mortgages or hypothecation"; and for the words "Primary Land Development Banks", the words "Primary Agriculture and Rural Development Banks" shall be substituted;
- (b) the existing section so amended shall be re-numbered as sub-section (1) and thereafter the following new sub-section (2) shall be inserted, namely:—

"(2) Notwithstanding anything contained in sub-section (1), in respect of loans guaranteed by the Government and guaranteed to any person or to any body of persons, whether incorporated or not and whether or not established by or under any law for the time being in force, if such a body is approved by the Government, the Board may, with the prior permission of the trustees, issue

debentures, on the strength of such Government guarantee and without the security of Gehan or mortgages or hypothecation and other assets, of one or more denominations, for such periods as it may deem expedient and subject to such conditions as the Government may think fit to impose."

10. In section 11 of the principal Act, wherever the word "mortgages" occurs, the words "Gehan, mortgages or hypothecation" and for the words "Primary Land Development Banks" occurring in item (ii) of clause (a), the words "Primary Agriculture and Rural Development Banks" shall be substituted.

Amendment of section 11.

11. After section 11 of the principal Act, the following new section 11-A shall be inserted, namely:—

Insertion of new section 11-A.

"11-A. Power to borrow money by issue of bonds or by way of loans.—

(1) Notwithstanding anything contained in the Himachal Pradesh Co-operative Societies Act, 1968, the Board may, with the prior approval of the Government and subject to the regulations made under this Act, borrow money by issue of bonds:

Provided that the issue of the bonds shall be in conformity with such directions or instructions as may be issued by the Reserve Bank of India or the National Bank for Agriculture and Rural Development from time to time.

(2) The bonds shall be in the form of promissory notes and shall be repayable on the expiry of such period or periods from the date of issue thereof as may be approved by the Reserve Bank of India or the National Bank for Agriculture and Rural Development:

Provided that the Board may repay the amount due under the bonds at any time before the period or periods so fixed, after issuing a notice in such manner as the Board may direct in that behalf to the holders of the bonds.

(3) Notwithstanding anything contained in the Himachal Pradesh Co-operative Societies Act, 1968, the Board may borrow money by way of loans from the Government, the National Bank for Agriculture and Rural Development, the Reserve Bank of India or such other financial institutions as may be approved by the trustee".

12. For section 12 of the principal Act the following section 12, along with its heading, shall be substituted, namely:—

Substitution of section 12.

"12. Charge on movable or immovable property of the borrower for amounts borrowed.—

(1) Notwithstanding anything contained in the Himachal Pradesh Co-operative Societies Act, 1968 or in any other law for the time being in force, any person owning any land or having interest in any land as tenant or occupier or owning any other movable or immovable property who applies to the Agriculture and Rural Development Bank for a loan, shall make a declaration

in the prescribed form creating a Gehan or mortgage or hypothecation in favour of the Agriculture and Rural Development Bank on the land or other movable or immovable property or interest therein or any movable property or movable assets to be acquired with the loan, specified in the declaration, for the repayment of the loan or advance granted or to be granted to him by the Agriculture and Rural Development Bank, together with interest on such amount of the loan or advance and expressly reserving in favour of the Agriculture and Rural Development Bank a right of sale without intervention of court, in case of default.

- (2) A declaration under sub-section (1) may be varied or cancelled at any time by the member with the prior approval of the Agriculture and Rural Development Bank.
- (3) No land or other movable or immovable property or any movable property or movable assets to be acquired with the loan or advance in respect of which a declaration under sub-section (1) has been made and no part thereof or of the interest in such land or movable or immovable property shall, without the consent of the Agriculture and Rural Development Bank, be sold or otherwise transferred until the entire amount of the loan or advance taken by the member from the Agriculture and Rural Development Bank, together with interest thereon, has been paid to the bank, and any transaction made in contravention of this sub-section shall be null and void.
- (4) Notwithstanding anything contained in the Registration Act, 1908 or any other law for the time being in force, it shall not be necessary to register any Gehan or mortgage or hypothecation created or executed in favour of the Agriculture and Rural Development Bank; provided the Agriculture and Rural Development Bank sends, within such time and in such manner as may be prescribed, a copy of the declaration of instrument whereby the Gehan or mortgage or hypothecation has been created or executed for the purpose of securing repayment of the loan, to the registering officer within the local limits of whose jurisdiction the whole or any part of the property to which the Gehan or mortgage or hypothecation relates is situated. 16 of 1908
- (5) On receipt of the copy of the declaration or instrument sent under sub-section (4), the registering officer shall file a copy or copies thereof, as the case may be, in Book No. 1, referred to in section 51 of the Registration Act, 1908 and thereupon, such Gehan or mortgage or hypothecation shall be deemed to create an interest in the property to which the declaration or instrument relates and shall constitute notice to any one dealing with the said property. 16 of 1908
- (6) Any person who makes any false statement in a declaration under sub-section (1) shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to two thousand rupees, or with both."

13. After section 12 of the principal Act, so amended the following new section 12-A shall be inserted, namely:—

Insertion of
section 12-A

“12-A. Applicant for loan from the Agriculture and Rural Development Bank to furnish declaration.—

- (1) Every person who applies for a loan from the Agriculture and Rural Development Bank shall make a declaration in the prescribed form before an officer specified by the Registrar in this behalf that the movable or immovable property on which the Gehan or mortgage or hypothecation is created as security for the loan is free from encumbrances, that he is in actual possession thereof and that he has the right to create the Gehan or mortgage or hypothecation, as the case may be, thereon in favour of the Agriculture and Rural Development Bank.
- (2) Notwithstanding anything contained in any law for the time being in force, where a declaration under sub-section (1) in respect of any movable or immovable property is false or defective, the Agriculture and Rural Development Bank shall, subject to the provisions of section 38, have a first charge on all other movable and immovable properties of the applicant, and all such properties shall be deemed to have been included in the Gehan created or mortgage or hypothecation executed by the applicant as security for the loan granted to him by the Agriculture and Rural Development Bank.
- (3) Any person, who makes a false declaration under sub-section (1) or makes any statement which is false in any such declaration shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to two thousand rupees, or with both.
- (4) The amount of loan that may be sanctioned on the basis of a declaration made under sub-section (1) shall be subject to such limit as may be prescribed.”

14. In section 13 of the principal Act after the figure “9”, the words, figure and signs “or bonds issued or loans raised under section 11-A, to such maximum amount as may be fixed by the Government from time to time,” shall be inserted.

Amendment
of section 13.

15. Before section 15 in Chapter V of the principal Act, the following new sections along with their headings shall be inserted, namely:—

Insertion of
sections 14-A,
14-B and
14-C.

“14-A. Security for loans.—(1) Subject to the provisions of this Act, the Agriculture and Rural Development Bank and the Primary Agriculture and Rural Development Bank may advance loans to individuals and institutions on the security of lands and other fixed assets or of assets acquired by the loans borrowed which have been hypothecated to the Agriculture and Rural Development Bank or the Primary Agriculture and Rural Development Bank, as the case may be, on the basis of principles of valuation approved by the Registrar;

Provided that the Agriculture and Rural Development Bank and the Primary Agriculture and Rural Development Bank may, for such purposes and for such periods as may be specified by the Government by special or general order, advance loans without such security of land but on the specific guarantee of the Government for the repayment of the principal and payment of interest thereon :

Provided further that the Agriculture and Rural Development Bank and the Primary Agriculture and Rural Development Bank may, with the previous approval of the Registrar and subject to such restrictions and limitations as may be prescribed, advance loans for such purposes and for such periods as may be determined by the Board.

- (2) Notwithstanding anything contained in any other law for the time being in force, the Agriculture and Rural Development Bank or a Primary Agriculture and Rural Development Bank may, under any land development scheme prepared and approved under the provisions of the Himachal Pradesh Land Development Act, 1973 or under this Act, grant or advance loans to any person or a group of persons with or without security of land for carrying out the work specified in the scheme, subject to such terms and conditions as are agreed upon between the Government and the Agriculture and Rural Development Bank or the Primary Agriculture and Rural Development Bank, as the case may be. 14 of 1973
- (3) All loans and advances granted and all amounts payable to, or recoverable by, the Agriculture and Rural Development Bank or the Primary Agriculture and Rural Development Bank shall, in case of default of payment, in addition to other remedies available to the Banks, be recoverable in the same manner as if they are arrears of public revenue due on land.
- (4) All loans and advances granted by the Agriculture and Rural Development Bank under this section shall be granted in conformity with the directions or instructions as may be issued by the National Bank for Agriculture and Rural Development established under section 3 of the National Bank for Agriculture and Rural Development Act, 1981. 64 of 1981

14-B. Money borrowed for development of land.—

Where the Agriculture and Rural Development Bank has granted a loan for improvement of any land situated in any area or areas covered by any specific programme of agricultural development, to a person appearing to the Agriculture and Rural Development Bank to have title to the said land or to be in lawful possession thereof, and the money has been either in whole or in part utilised for such improvement, any person acquiring title to such land on ground of superior title or on any other ground shall be liable to repay to the Agriculture and Rural Development Bank so much of the loan as has been utilised for the improvement of the land together with interest thereon.

14-C. Loans to persons having restricted rights of transfer.—

- (1) Notwithstanding anything contained in any law, custom or usage, where the Agriculture and Rural Development Bank makes a loan or an advance to a member belonging to a Scheduled Caste or Scheduled Tribe or to any other person having restricted rights of alienation over immovable property, it shall be competent to such member or person to create a Gehan or mortgage or hypothecation on such property in favour of such Agriculture and Rural Development Bank as security for such loan.
- (2) The Agriculture and Rural Development Bank shall, in the event of default by the member or person and without prejudice to any other remedy available to it either under a law or contract or otherwise, be entitled to take possession of such property and lease the same to any person belonging to the same caste or tribe as the member belongs in case the defaulter is a member of a Scheduled Caste or Scheduled Tribe and in any other case to any person and appropriate the net receipts from the lease in repayment of the moneys due to it; and the member or person shall not be entitled to recover possession of such property until the amount due to the Agriculture and Rural Development Bank has been repaid in full."

16. In section 17 of the principal Act,—

Amendment
of section 17.

- (i) for the words "Land Development Bank" wherever these occur, the words "Agriculture and Rural Development Bank" shall be substituted;
 - (ii) for the word "mortgage" wherever it occurs, the words "Gehan created or mortgage or hypothecation executed" shall be substituted;
 - (iii) for the word "mortgagee", the words "Agriculture and Rural Development Bank" shall be substituted;
 - (iv) existing section so amended shall be re-numbered as sub-section (1) and thereafter following sub-section (2) shall be inserted, namely:—
- "(2) Notwithstanding anything contained in any law for the time being in force, a Gehan created or mortgage or hypothecation executed in favour of the Agriculture and Rural Development Bank or a Primary Agriculture and Rural Development Bank shall take precedence over any attachment or equitable mortgage over the properties where, after publication of a notice in the prescribed form, the claim or interest under such attachment or equitable mortgage has not been notified to such bank within the time prescribed in the said notice."

17. Section 18 of the principal Act shall be omitted.

Omission of
section 18.

Amendment
of section 19.

18. In section 19 of the principal Act,—

- (i) for the words “Land Development Bank” wherever these occur, the words “Agriculture and Rural Development Bank” shall be substituted;
- (ii) the word “mortgage” shall be substituted with the words “Gehan, mortgage or hypothecation”; and
- (iii) the word “mortgaged” shall be substituted with the word “involved”.

Substitution
of section 21.

19. For section 21 of the principal Act, the following section 21 shall be substituted, namely:—

“21. Power of the Agriculture and Rural Development Bank to receive money and grant valid discharge.—Notwithstanding that a Gehan created or mortgage or hypothecation executed in favour of the Agriculture and Rural Development Bank has been transferred, or is deemed under the provisions of section 38, to have been transferred, to the Agriculture and Rural Development Bank—

- (a) all moneys due under the Gehan or mortgage or hypothecation shall, in the absence of any specific direction, to the contrary issued by the Board or the trustees and communicated to the person who created the Gehan or executed the mortgage or hypothecation, be payable to the Agriculture and Rural Development Bank and such payment shall be as valid as if the Gehan or mortgage or hypothecation had not been so transferred; and
- (b) the Agriculture and Rural Development Bank shall, in the absence of any specific direction to the contrary issued by the Board or the trustees and communicated to the Agriculture and Rural Development Bank be entitled to sue on the Gehan or mortgage or hypothecation or take any other proceeding for the recovery of the moneys due under the Gehan or mortgage or hypothecation.”

Substitution
of section 22.

20. For section 22 of the principal Act, the following section, along with its heading, shall be substituted, namely:—

“22. Powers of the Agriculture and Rural Development Bank in case security property is destroyed or becomes insufficient.—where any

property which is subject to a Gehan or mortgage or hypothecation in favour of the Agriculture and Rural Development Bank is wholly or partially destroyed or for any reason the security is rendered insufficient and the person who created the Gehan or executed the mortgage or hypothecation having been given a reasonable opportunity by the Board or the Committee of the Agriculture and Rural Development Bank, as the case may be, to provide further security enough to render the whole security sufficient, or to repay such portion of loan as may be determined by the Bank, has failed to provide such security, or to repay such portion of the loan, the whole of the loans shall be deemed to fall due at once; and the Board or the Committee, as the case may be, shall be entitled to take action against the person who created the Gehan or executed the mortgage or hypothecation under this Act.

Explanation.—Security shall be deemed insufficient within the meaning of this section, unless the value of the property (including improvements made thereon) exceeds the amount for the time being due to the Agriculture and Rural Development Bank by such proportion as may be specified in the regulations made by the Board.”

21. In sub-section (1) of section 23 of the principal Act,—

Amendment
of section
23.

(a) for the word “mortgage”, the words “Gehan created or mortgage or hypothecation;” and

(b) for the words “produce of the mortgaged land including the standing crops thereon; provided that such crops belong to the mortgagor or mortgagors, as the case may be”, the words “produce of the land to which the Gehan or the mortgage or hypothecation relates, including the standing crops thereon and other movable property of the defaulter”;

shall be substituted.

22. For section 26 of the principal Act, the following section shall be substituted, namely:—

Substitution
of section 26.

“26. (1) Notwithstanding anything contained in the Transfer of Property Act, 1882 (4 of 1882) or any other law for the time being in force, where a Gehan or mortgage or hypothecation has been created or executed in movable or immovable property in accordance with the provisions of sub-section (1) of section 12 in favour of the Agriculture and Rural Development Bank or a Primary Agriculture and Rural Development Bank, the Board or the Committee of such bank or any person authorised by the Board or such Committee shall, in case of default in the payment of sums due to the bank, have power, in addition to any other remedy available to the Primary Agriculture and Rural Development Bank to bring to sale the property to which Gehan or mortgage or hypothecation relates without intervention of the court.

(2) No such power shall be exercised unless and until—

(a) the Board or the Committee has previously authorised such sale in the exercise of the power conferred on it by sub-section (1), after hearing and deciding the objections, if any, of the person who

created the Gehan or executed the mortgage or hypothecation, or any other person having any interest in the security property;

(b) notice in writing requiring payment of sums due to the Agriculture and Rural Development Bank or any part thereof, has been served upon—

(i) the person creating or executing the Gehan or mortgage or hypothecation;

(ii) any person who has any interest or charge upon the property to which the Gehan or mortgage or hypothecation relates or any other right to redeem the same;

(iii) any surety for the payment of the sums due to the Agriculture and Rural Development Bank or any part thereof; and

(iv) any creditor of the person creating or executing the Gehan or mortgage, who has in a suit for the administration of his estate, obtained a decree for sale of the property to which Gehan or mortgage, or hypothecation relates;

(c) there has been default in payment of such sums due to the Agriculture and Rural Development Bank for a period of six months after service of the notice referred to in clause (b):

Provided that the objection to give such notice to the persons mentioned in sub-clauses (ii) and (iv) shall be confined to cases where the Board or the Committee has notice of such claims; and

(d) the Registrar, in case where the amount claimed by the State Bank is disputed, has certified that the amount claimed or lesser amount is due from the person creating or executing the Gehan, mortgage or hypothecation."

Amendment
of sections 27
and 28.

23. In sections 27 and 28 of the principal Act,—

(a) for the words "mortgaged property" wherever these occur, the words "the property to which the Gehan or mortgage or hypothecation relates"; and

(b) for the word "mortgagor", the words "the person creating or executing the Gehan, mortgage or hypothecation";

shall be substituted.

Amendment
of section 29.

24. In section 29 of the principal Act,—

(a) for the word "mortgage", wherever it occurs, the words "Gehan or mortgage or hypothecation" shall be substituted; and

(b) the word "mortgaged" wherever occurring before the word "property" shall be omitted.

Amendment
of section 30.

25. The word "mortgaged" occurring before the word "property" in section 30 of the principal Act shall be omitted.

26. In section 31 of the principal Act,—

Amendment
of section 31.

- (a) the word “mortgaged” occurring before the word “property” shall be omitted;
- (b) for the word “mortgage”, the words “Gehan, mortgage or hypothecation” shall be substituted; and
- (c) for the word “mortgagor” wherever it occurs, the words “the person creating the Gehan or executing the mortgage or hypothecation” shall be substituted.

27. In the heading and body of section 32 of the principal Act, the word “mortgaged” wherever it occurs, shall be omitted and for the words “Land Development Bank” wherever these occur, the words “Agriculture and Rural Development Bank” shall be substituted.

Amendment
of section 32.

28. In section 33 of the principal Act,—

Amendment
of section 33.

- (a) for the words “mortgages executed in favour of the Land Development Banks”, the words “Gehan, mortgage or hypothecation executed in favour of the Agriculture and Rural Development Banks” shall be substituted;
- (b) for the word “mortgagor”, the words and sign “person who created the Gehan or executed the mortgage or hypothecation, as the case may be” shall be substituted; and
- (c) the word “mortgaged” shall be omitted.

29. In section 36 of the principal Act, for the words “Land Development Bank” wherever these occur, the words “Agriculture and Rural Development Bank”; and for the word “mortgagor”, the words “person who created the Gehan or executed the mortgage or hypothecation” shall be substituted.

Amendment
of section 36.

30. In section 38 of the principal Act,—

Amendment
of section 38.

- (a) for the words “Primary Land Development Bank” occurring in its heading and in its body, the words “the Primary Agriculture and Rural Development Bank” shall be substituted;
- (b) for the word “mortgages” occurring in its heading, the words “Gehan, mortgages or hypothecation” shall be substituted;
- (c) for the words “the mortgages executed”, the words “A Gehan created or mortgage or hypothecation executed or deemed to have been created or executed” shall be substituted;
- (d) after the words “all other assets transferred”, the words and sign “or deemed to have been transferred,” shall be substituted; and
- (e) in between the words “such” and “execution”, the word and sign “creation,” shall be inserted.

31. In section 39 of the principal Act,—

Amendment
of section 39

- (a) in the heading, the word “mortgaged” shall be omitted;
- (b) in sub-section (1), for the word, figures and sign “section 23”, the words and figures “section 22 or section 23”, shall be substituted; and

- (c) for the words "Primary Land Development Bank" and "Land Development Bank" wherever these occur in it, the words "Primary Agriculture and Rural Development Bank" and "Agriculture and Rural Development Bank" shall be substituted respectively.

Substitution
of section 40.

32. For section 40 of the principal Act, the following section shall be substituted, namely:—

"40. Gehan or mortgage or hypothecation not to be questioned in insolvency proceedings.—Notwithstanding anything contained in the Insolvency Act, 1955, a Gehan created or mortgage or hypothecation executed in favour of the Agriculture and Rural Development Bank shall not be called in question on the ground that it was not created or executed in good faith or for valuable consideration or on the ground that it was created or executed in order to give such bank a preference over the other creditors of the person who created the Gehan or executed the mortgage or hypothecation."

Substitution
of section 41.

33. For section 41 of the principal Act, the following section shall be substituted, namely:—

"41. Priority of Gehan, mortgage and hypothecation.—Any amount payable under a Gehan created or mortgage or hypothecation executed in favour of the Agriculture and Rural Development Bank shall have priority over any claim of the Government arising from a loan under the Land Improvement Loans Act, 1883 or any other law for the time being in force in the State, granted after the creation of the Gehan or the execution of the mortgage or hypothecation".

Amendment
of section 42.

34. In section 42 of the principal Act,—

- (a) for the words "Land Development Bank" wherever these occur in its heading and its body, the words "Agriculture and Rural Development Bank" shall be substituted;
- (b) for the word "mortgage", the words "Gehan is created or mortgage or hypothecation"; and for the word "mortgagor", the words "person who created the Gehan or executed the mortgage or hypothecation" shall be substituted; and
- (c) after the words "specified in the notice" but before the sign ":", occurring for the second time, the sign and the words "except in cases where such person proves to the satisfaction of the Board or the Committee of the Agriculture and Rural Development Bank, as the case may be, that the failure to receive notice or payment was due to causes beyond his control" shall be inserted.

Amendment
of section 45.

35. In section 45 of the principal Act,—

- (a) for the words "Land Development Bank" wherever these occur, the words "Agriculture and Rural Development Bank" shall be substituted;
- (b) for the words "mortgage" or "mortgages" wherever these occur in the heading and the body of the section, the words "Gehan created or mortgage or hypothecation" shall be substituted; and

- (c) for the words "was executed", the words "was created or executed" shall be substituted.

36. After section 49 of the principal Act, the following section 49-A shall be inserted, namely:—

Insertion of section 49-A.

"49-A. Employees etc., to be public servants.—Any employee of the Agriculture and Rural Development Bank engaged in the recovery of loans under the provisions of this Act or the rules or any person appointed as liquidator or arbitrator shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code, 1860."

45 of 1860

37. In section 50 of the principal Act,—

Amendment of section 50.

- (i) for the words "Primary Land Development Bank" and "Land Development Bank" wherever these occur, the words "Primary Agriculture and Rural Development Bank" and "Agriculture and Rural Development Bank" shall respectively be substituted;
- (ii) in clause (c), for the words "on mortgages transferred to the State Bank" occurring at the end, the words "on Gehan or mortgage or hypothecation transferred, or deemed under the provisions of section 38 to have been transferred, the State Bank" shall be substituted;
- (iii) for clause (e), the following clause shall be substituted, namely:—
 - "(e) prescribing the proportions by which the property, to which Gehan, mortgage or hypothecation relates, should exceed the amount for the time being due on the Gehan or mortgage or hypothecation for security to be sufficient within the meaning of Explanation under section 22;" ; and
- (iv) in clause (g), for the word "mortgagor", the words "persons creating or executing a Gehan or mortgage or hypothecation" shall be substituted.

38. In sub-section (2) of section 55 of the principal Act,—

Amendment of section 55.

- (a) for the words "Primary Land Development Banks" occurring in clause (xii), the words "Primary Agriculture and Rural Development Banks" and for the sign "." occurring at the end, the sign ";" shall be substituted and thereafter the following clauses (xiii), (xiv) and (xv) shall be added, namely:—

"(xiii) the form of declaration under section 12;

(xiv) the form of notice under sub-section (2) of section 17; and

(xv) any other matter required or allowed by this Act to be prescribed."

STATEMENT OF OBJECTS AND REASONS

The Himachal Pradesh Land Development Bank Act, 1979 was enacted to supplement the provisions of the Himachal Pradesh Co-operative Societies Act, 1968 and to facilitate the functioning of Co-operative Land Development Banks in the State of Himachal Pradesh. The Himachal Pradesh Co-operative State Land Development Bank Ltd. has been advancing loans to the agriculturists/horticulturists of the Pradesh only on the strength of security of agricultural land, which has to be mortgaged in favour of the bank, and that too for the development of agriculture and horticulture in the Pradesh.

2. In order to give clear idea of the nature and ambit of the functioning and the activities of the Co-operative Land Development Banks and to ensure business co-ordination with the banks constituted under the provision of the National Bank for Agriculture and Rural Development Act, 1981 (Central Act), it has been considered necessary to change the nomenclature of "The Himachal Pradesh Co-operative State Land Development Bank Ltd." and those of "The Co-operative Land Development Banks" to "The Co-operative Agriculture and Rural Development Bank".

3. Of late, stress had been laid for introduction of the system of "Gehan" and hypothecation under which long terms loans could be made available to the needy rural population for diversified purposes. To cater to the needs of all needy rural people, some States have Stably amended or are amending their enactments concerning Land. Development Banks. In this State the Himachal Pradesh Co-operative State Land Development Bank Ltd. has started advancing long terms loans for diversified purpose, as for the development of animal husbandry, piggery, pisciculture, sericulture and forestry etc. The provisions for creation of Gehan and hypothecation in the Act are necessary as these will facilitate lending for non-land based activities which will supplement the existing mortgage conditions and will enable the intending borrowers to offer both the movable and immovable property as security for the loans to be raised by them from the Bank. This will not only expand the rural coverage but will also facilitate the lending process to the benefit of the Pradesh. Even the landless will be benefitted by the expansion of bank's lending activities.

This Bill seeks to achieve the aforesaid objectives.

FINANCIAL MEMORANDUM

The Bill does not involve any financial implications other than those already provided in the principal Act. However clauses 11 and 14 empower the Board to issue the bonds and the said bonds are to carry the guarantee of the State Government. Under section 52 of the principal Act, the State Government is already authorised to constitute a guarantee fund. Thus for this purpose no additional expenditure will have to be incurred by the State Government.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clauses 37 and 38 of the Bill seek to make consequential amendments in sections 50 and 55 of the principal Act, which empower the Board to make regulations and the State Government to make rules respect of the matters enumerated therein. The proposed delegation is essential and normal in character.

HIMACHAL PRADESH VIDHAN SABHA SECRETARIAT
NOTIFICATION*Shimla-4, the 1st April, 1987*

No. 1-15/87-VS. —In pursuance to rule 135 of the Rules of Procedure and Conduct of Business of the Himachal Pradesh Legislative Assembly, 1973, the Himachal Pradesh Legislative Assembly (Allowances and Pension of Members) (Amendment) Bill, 1987 (Bill No. 11 of 1987) having been introduced on the 1st April, 1987 in the Himachal Pradesh Vidhan Sabha, is hereby published in the Gazette.

V. VERMA,
Secretary.

Bill No. 11 of 1987.

**E HIMACHAL PRADESH LEGISLATIVE ASSEMBLY (ALLOWANCES
AND PENSION OF MEMBERS)(AMENDMENT) ACT, 1987**

(AS INTRODUCED IN THE LAGISLATIVE ASSEMBLY)

A

BILL

further to amend the Himachal Pradesh Legislative Assembly (Allowances and Pension of Members) Act, 1971 (Act No. 8 of 1971).

BE it enacted by the Legislative Assembly of Himachal Pradesh in the Thirty-eighth Year of the Republic of India as follows:—

1. (1) This Act may be called the Himachal Pradesh Legislative Assembly (Allowances and Pension of Members) (Amendment) Act, 1987.

Short title
and com-
mencement.

(2) It shall come into force at once.

of 1971 2. In section 4-B of the Himachal Pradesh Legislative Assembly (Allowances and Pension of Members) Act, 1971,—

Amendment
of section
4-B.

(a) for the words “seven hundred and fifty”, the words “one thousand three hundred and fifty” shall be substituted;

(b) for the sign “.” appearing at the end of the existing section 4-B, the sign “:” shall be substituted and thereafter the following proviso along with an Explanation shall be added, namely:—

“Provided that a member who is entitled to the services of ministerial staff, including a stenographer, from the Central Government or State Government or any Corporation owned or controlled by the Central Government or the State Government or any local authority shall be entitled only to draw the allowance under this section at the rate of seven hundred and fifty rupees per mensem.

Explanation.—For the purposes of this section, the expression ‘secretarial facility’ shall include stenographic assistance.”

STATEMENT OF OBJECTS AND REASONS

By virtue of the provisions contained in section 4-B of the Himachal Pradesh Legislative Assembly (Allowances and Pension of Members) Act, 1971, the Member of the State Legislative Assembly are entitled to draw an allowance at the rate of seven hundred and fifty rupees per mensem as constituency, secretarial and postal facilities allowance. A sum of rupees six hundred per mensem is also payable to the members of the State Legislative Assembly in lieu of stenographic assistance under the administrative instructions. It is considered expedient to make suitable provisions in the aforesaid Act to that extent.

This Bill seeks to achieve the aforesaid objective.

VIRBHADRA SINGH,
Chief Minister.

SHIMLA :
The 1st April, 1987.

FINANCIAL MEMORANDUM

Clause 2 of the Bill seeks to make provisions for the payment of an allowance in lieu of the stenographic assistance @ Rs. 600.00 p.m. to each Member of the Legislative Assembly in addition to the constituency, secretarial and postal facilities allowance @Rs. 750/p. m. admissible to him under section 4-B of the principal Act. Presently, the said allowance of Rs. 600/- p.m. is being paid to the Members of the Legislative Assembly under the administrative instructions issued by the State Government and for this purpose a recurring expenditure to the tune of Rs. 4.00 lacs is being incurred out of the State exchequer. Thus, on the enactment of the proposed provisions no additional expenditure will be incurred for this purpose.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Nil

RECOMMENDATIONS OF THE GOVERNOR UNDER ARTICLE 207 OF THE CONSTITUTION OF INDIA

[File No. GAD (PA) 4 (D)-12/87]

The Governor of Himachal Pradesh having been informed of the subject matter of the Himachal Pradesh Legislative Assembly (Allowances and Pension of Members) (Amendments) Bill, 1987, recommends, under Article 207 of the Constitution of India, the introduction and consideration of the Bill in the Legislative Assembly.